IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 83 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUBODHBHAI JAYANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 83 of 2002

MS SUDHA R GANGWAR for Petitioner No. 1-8

MR SS PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2002

ORAL JUDGEMENT

1. This Revision Application has been preferred by the applicants- original accused of Criminal Case No. 159/1987 instituted on the strength of a complaint filed by Mr. K.C. Dixit, Drug Inspector on 2.2.1987 for the

offences punishable under Section 27 R/w Sections 18(a)(i), 18(a)(vi) and 18(c) of the Drug & Cosmetics Act, 1940 (hereinafter referred to as the Act), in the Court of ld. Chief Metropolitan Magistrate, Ahmedabad.

2. Pending the said criminal case, ld. APP for the State submitted an application Exh.4 before the Ld. Chief Metropolitan Magistrate, Ahmedabad praying to commit the case to the Court of Sessions as the offence punishable under Section 27(a) of the Act was exclusively triable by the Court of Sessions as it provides for life imprisonment.

3. Ld. Chief Metropolitan Magistrate, vide order dated 6.10.2001, rejected the said application. Order of the ld. Chief Metropolitan Magistrate, therefore, was challenged in the Court of Sessions by filing Criminal Revision Application No. 179/2001. Ld. City Sessions Judge, Ahmedabad, while dealing with aforesaid Revision Application preferred by the State of Gujarat, allowed the same and quashed and set aside the order passed by ld. Chief Metropolitan Magistrate, vide judgment dated 21.12.2001 and directed the ld. Chief Metropolitan Magistrate, Ahmedabad to commit the criminal case to the Court of Sessions under Section 209 of CrPC. This judgment of the ld. City Sessions Judge dated 21.12.2001, is under challenge.

4. In this Revision Application, this Court is called upon to decide following important questions of law:-

(1) Is the offence under Section 27(a) of the Drugs & Cosmetics Act, 1940, exclusively triable by the Court of Sessions ?

(2) Is the provision in proviso to Section 202(2) requiring the Magistrate to hold inquiry in cases exclusively triable by the Court of Sessions Mandatory ?

5. After careful consideration of the facts stated in the complaint filed against the present applicants original accused, nature of offence allegedly committed by them and both the orders passed by the Court below, I am of the view that the case of the present applicants is directly and squarely covered by the decision of this Court delivered by this very Bench in Criminal Revision Application No. 23/2002 decided on 16.3.2002, wherein, this Court after considering scheme of the Act and various decisions on the identical questions of law referred to above, has held that ld. Metropolitan

Magistrate is authorised to impose any penalty provided under the Act. While dealing with Criminal Revision Application No. 23/2002, this Court has considered similar facts situation and all legal aspects raised by the applicant and assailed by the State of Gujarat. By referring to the decision in the case of Ranjit Chaterjee v/s State of West Bengal, reported in 1986 Criminal Law Journel P.1847 and State of Uttar Pradesh v/s Khushi Ram, reported in AIR 1960 SC P.905, it has been held that the ld. Chief Metropolitan Magistrate is authorised to impose any penalty provided under the Act. Dealing with the ratio of the decision of the Allahabad High Court in reference to Section 21 of the Act and Sections 32 & 347 of CrPC (Old), it has been held that ld. Magistrate is competent to award full sentence and he is not required to commit the case to the Court of Sessions.

6. Adopting the same reasons and analogy in the present case and treating the reasons assigned in the aforesaid Revision Application as reasons of this Criminal Revision, it would not be necessary to reiterate the same as this Revision Application is squarely covered by the aforesaid decision of this Court in Criminal Revision Application No. 23/2002.

7. In the result, Criminal Revision Application is allowed. Impugned judgment dated 21.12.2001 passed by ld. City Sessions Judge, Ahmedabad in Criminal Revision Application No. 179/2001 is hereby quashed and set aside. The trial of Criminal Case No. 159/1987 against the present applicants shall be proceeded with in the Court of ld. Chief Metropolitan Magistrate, Ahmedabad.

8. Rule is made absolute.

30.4.2002 [C.K. BUCH, J]
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